urged the court to consider the question of contributory negligence.

The second defendant testified that he hugged to his side of the road all the way. He said this:

"Before impact I did not swerve to the left. I proceeded on my own side of the road. If each vehicle was on its own side of the road the accident would not have happened. I believe the lorry came to my side of the road. That is why it grazed against my bus".

The second defendant knew that part of the road very well. He had first noticed the heap of gravel before the accident. He had noticed the on-coming lorry. Did he foresee or ought to have foreseen what the lorry driver would do next; if so, did he take avoiding action. In this respect the words of Lord Uthwatt in *London Passenger Transport Board* v. *Upsom* [3] are not without relevance:

"A driver is not, of course, bound to anticipate folly in all its forms, but he is not, in my opinion, entitled to put out of consideration the teachings of experience as to the form those follies commonly take".

It was in the same vein that Lord du Parcq said at page 72:

"A prudent man will guard against the possible negligence of others when experience shows such negligence to be common".

The second defendant said that even if one keeps to the left of the road, the clearance is about less than a foot. On the other hand, the fourth defendant said that the bus could have avoided the accident if it applied its brakes. The inference therefore is that the second defendant appears to have thought that he owes no duty of care to other users so long as he kept his vehicle to his own side of the road. In my view the second defendant clearly failed to take any avoiding action and is also to blame.

I have no hesitation to say that both drivers of the vehicles are to blame. I hold that the fourth defendant is 75 per cent. to blame and the second defendant 25 per cent.

Special damages were agreed at $175, not taking into account the item under extra nourishment which Mr. Joseph has attacked as being unreasonable on the ground that hospital nourishment was adequate and that the doctor did not recommend it. I am inclined to agree with learned counsel and I would disallow that part of the claim.

With regard to general damages, the plaintiff at the time of accident was 11 years old. He was hospitalised for one month and thereafter was treated as an out-patient for six months. He sustained a 4" laceration wound over the media aspect of his left ankle, severing the tendons; and a fracture of the ankle bone. There was therefore pain and suffering. He now bears a scar over this injury.

The lady doctor who treated him during the six months he was treated as an outpatient said that there would still be some disability. He would not be able to participate in school games. The doctor said that his wound has now completely healed. To this, the plaintiff said that he still encounters some pain in his ankle. If he walks for long distances the pain will come back. If he presses the injured part he says that there is pain. If he wears shoes he will get the pain. That may be so, but in my view the pain will eventually disappear.

I have considered similar or quite similar authorities on the point which were cited by counsel and I would assess a sum of $2,500 for pain and suffering. In all, there will be $175 special damages and $2,500 general damages. This amount together with the plaintiff's costs will be apportioned between the defendants according to their respective liabilities

Order accordingly.

Solicitors: *Allen, Gledhill & Ball; Sault, Keith Sellar & Co.; Joseph & Son.*

VAN VIERINTEN v. PUBLIC PROSECUTOR

[A.Cr.J. (Ambrose J.) October 5, 1965]

[Singapore — Magistrates Appeal No. 69 of 1965]

Criminal Trial — Plea of guilty — Accused charged with permitting another person to use a motor vehicle whilst motor vehicle was not insured — Whether plea of guilty should have been accepted.

The appellant was charged with permitting another person to use a motor vehicle whilst there was not in force in relation to the user of the motor vehicle such a policy of insurance in respect of third party risks, as complied with the requirements of the Motor Vehicles (Third Party Risks and Compensation) Ordinance, 1960, an offence under section 3 of the Ordinance. He pleaded guilty and was fined $75 and disqualified from holding a driving licence for twelve months.

Held: the learned magistrate should not have accepted the plea of guilty as the question of law whether there was in force in relation to the user of the motor vehicle such a policy of insurance as complied with the requirements of the Motor Vehicles (Third Party Risks and Compensation) Ordinance, 1960, was a difficult one for a person unversed in the law to answer and therefore the magistrate could not safely convict solely on an admission of guilt by the appellant.

MAGISTRATE'S APPEAL.

Lal Behari Singh for the appellant.

Dalip Singh (Deputy Public Prosecutor) for the respondent.

Ambrose J.: In this case the appellant was charged with permitting another person to use a motor vehicle whilst there was not in force in relation to the user of the motor vehicle such a policy of insurance in respect of third-party risks as complies with the requirements of the Motor Vehicles (Third Party Risks and Compensation)

Ordinance, 1960, an offence against section 3(1) and punishable under section 3(2) of the Ordinance. He pleaded guilty and was convicted and sentenced to a fine of $75 and disqualified for holding a driving licence limited to Class III vehicles for a period of twelve months.

In my judgment, the magistrate should not have accepted the plea of guilty in view of the following considerations. The appellant was not represented by counsel. The question of law whether or not there was in force in relation to the user of the motor vehicle such a policy of insurance as complied with the requirements of the Motor Vehicles (Third-Party Risks and Compensation) Ordinance, 1960, was a difficult one for a person unversed in the law to answer. The magistrate could not safely convict solely on an admission of guilt by the appellant. The prosecution should have been called upon to prove beyond reasonable doubt that there was not in force in relation to the user of the motor vehicle at the material time such a policy of insurance as complied with the statutory requirements. I accordingly set aside the conviction and sentence and the order of disqualification and ordered the fine of $75 paid by the appellant to be refunded.

Order accordingly.

LING KAI HUAT & ANOR. v. PUBLIC PROSECUTOR

[A.Cr.J. (Lee Hun Hoe J.) October 17, 1965]

[Sibu — Criminal Appeal No. 5 of 1965]

Penal Code, ss. 383, 384 and 44 — Extortion — Threat to use legal powers as cover for illegal purpose — Whether this constitutes injury within meaning of Penal Code.

Criminal Law — "Injury" — Meaning of.

The appellants appealed against their conviction for extortion. It was alleged that the first appellant, a labourer, and the second appellant, a police constable extorted money from one TSH by threatening to take action against him for trading without a licence. The second appellant's main ground of appeal was that the learned magistrate was wrong in convicting him because the threat alleged to have been made by him was a threat to exercise his legal powers.

Held: when the exercise of legal powers is used as a cover for an illegal purpose then it becomes unlawful and can therefore constitute "injury" within the meaning of the Penal Code. The second appellant was therefore rightly convicted in this case.

Cases referred to:—

(1) *Vincent Lee* v. *R.* [1949] M.L.J. 296.

(2) *Abu Hassan* v. *Public Prosecutor* [1962] M.L.J. 61.

(3) *Public Prosecutor* v. *Johar* [1965] 1 M.L.J. 139.

(4) *Loh Kwang Seang* v. *Public Prosecutor* [1960] M.L.J. 271.

CRIMINAL APPEAL.

C. T. Wong for the appellants.

Chew Peng Cheng (Deputy Public Prosecutor) for the respondent.

Cur. Adv. Vult.

Lee Hun Hoe J.: Appellants were jointly charged with two offences of extortion under section 384 of the Penal Code. First appellant was convicted on both charges and sentenced to 30 months' imprisonment on each charge. The sentences were to run concurrently. Second appellant was acquitted on the first charge but was convicted on the second charge and was sentenced to 21 months' imprisonment. First appellant was in addition charged with two offences of personating a police officer under section 170 of the Penal Code. He was acquitted of the third charge but was convicted on the fourth charge. He was sentenced to six months' imprisonment. This sentence was to run consecutively with the other two sentences. Thus he would have to serve 36 months' imprisonment. Both appellants appealed against their convictions and sentences. Inche C. T. Wong appeared for both appellants while the Deputy Public Prosecutor Inche Chew Peng Cheng appeared for the Public Prosecutor.

First appellant, a Chinese, was a labourer and second appellant, a Malay, was a police constable. On 8th March, 1965 at about 10 a.m. they went to Oya Road, Sibu on a motor cycle. First appellant was the driver and second appellant was a passenger. At the 15th mile, Oya Road it was alleged that they extorted money from Tiong Sing Huak by threatening to take action against him for trading without licence. There it was alleged first appellant personated as a police officer. They then proceeded back to Sibu town stopping at the 10th mile, Oya Road where it was alleged that they extorted money from Lih Tai Moi similarly by threatening to take action against him for trading without licence. In the course of this extortion first appellant purported to have personated as a police officer.

First appellant put up a defence of *alibi* while second appellant did not dispute that he was at the 10th and 15th mile, Oya Road on the day and times. However, second appellant denied demanding money from the two persons named.

The learned magistrate had gone into the evidence most carefully. If I may say so he examined the evidence critically and fairly. He had seen and heard all the witnesses and would be in a better position to assess their credibility. I do not have such opportunity and see no reason to interfere with his finding of facts. There is no substance in the first appellant's grounds of appeal against the learned magistrate's finding